



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 25, 2010  
Rm. 325, 2:45 p.m.

To: The Honorable Jon Riki Karamatsu, Chair  
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair, and Commissioners of the Hawai‘i Civil Rights  
Commission

Re: S.B. No. 2565, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports S.B. No. 2565, S.D.1, which amends Act 30, L Sp 2009 by extending the deadline for the HCRC to adopt administrative rules to conform state law protections against disability discrimination to the federal Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The HCRC has been notified that the U.S. Equal Employment Opportunities Commission (EEOC) is unlikely to finalize its guidelines implementing the ADAAA until July, 2010, at the earliest, and will likely take longer than that.

The HCRC will therefore not be able to review the final EEOC guidelines and complete its rulemaking process by the deadline of December 31, 2010, as set by Act 30.

S.B. No. 2565, S.D.1, requires the HCRC to complete its rulemaking process within six months after the EEOC publishes its final rules. The HCRC agrees with the basic framework proposed in S.D.1, in which the time for the HCRC to complete the rulemaking process is triggered by the publication of the final EEOC rules. However, the HCRC respectfully requests a period of one year to complete what will be complex and lengthy rulemaking process.

The ADA and the EEOC guidelines reflect a major expansion of the scope, effect, and jurisdiction of the ADA and its protections for workers with disabilities. The proposed federal regulations have generated substantial controversy. Similarly, the HCRC rulemaking process will involve substantive amendments to several key terms and examples that comprise the definition of "disability", based on review of the final EEOC guidelines and consultation with EEOC. These amendments must be drafted and submitted for review by the Office of the Attorney General, the Department of Budget and Finance, the Department of Business, Economic Development and Tourism, and approved by the Governor, prior to even publishing the notice of public hearing. Under H.R.S. 91-3, the HCRC must give at least 30 days notice of public hearing on the rules and must publish that notice at least once in newspapers of general circulation in the state and each of the counties. At public hearing, we anticipate a large amount of public comment and input, which must also be reviewed and considered before the rules can be finalized. Therefore the Commission feels that a one year period, at minimum, after the EEOC finalizes its rules is a realistic time period for the HCRC to finalize and adopt its disability discrimination rules.

The HCRC supports S.B. No. 2564, SD1, with a request that it be amended to provide an extension of time to at least one year after the EEOC publishes its final rules, and urges your favorable consideration.



## DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814  
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

March 25, 2010

### TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Senate Bill 2565, Senate Draft 1 – Relating to the Hawaii Civil Rights Commission

The Disability and Communication Access Board (DCAB) supports Senate Bill 2565, Senate Draft 1. We have no objection to Senate Draft 1 that extends the deadline for the Hawaii Civil Rights Commission to adopt administrative rules conforming state law protections against disability discrimination to the federal standard until six (6) months after the U.S. Equal Opportunity Commission publishes final rules implementing the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. DCAB also supported the changes in the federal law.

Administrative Directive 97-10 designated DCAB as the ADA Coordinator for the Executive Branch Departments and agencies. DCAB has and will continue to provide technical assistance to State and county agencies to support and enhance their effort to comply with the ADA, ADA Accessibility Guidelines and ADAAA as an employer, and provider of services to the general public, including individuals with disabilities.

Through our combined efforts, it is our goal that the State of Hawaii will provide employment opportunities and services that are accessible to everyone.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

CHARLES W. FLEMING  
Chairperson  
Legislative Committee

FRANCINE WAI  
Executive Director

**PETER L. FRITZ**  
414 KUWILI STREET, #104  
HONOLULU, HAWAII 96814  
TELEPHONE: (808) 532-7118  
E-MAIL: PLFLEGIS@FRITZHQ.COM

**HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010**

**COMMITTEE ON JUDICIARY  
Hearing: March 25, 2010  
Testimony on S.B. 2565 SD1  
(Relating To The Hawaii Civil Rights Commission)**

Chair Karamatsu, Vice Chair Ito, and members of the Committee:

My name is Peter Fritz. I am an attorney and the Chair of the Disability and Communications Access Board. I was an Administrative Rules Specialist with the Department of Taxation and I am familiar with rule making procedures. I am testifying in my personal capacity. My testimony draws from my experience in labor law, as an Administrative Rules Specialist and experience with the Hawaii Civil Rights Commission ("HCRC") as an attorney in private practice. I am testifying **in support** the language in S.B. 2565 SD1 extending the time for the HCRC to adopt rules relating to the amendments made by the ADA Amendments Act of 2008 ("ADAAA") until six months after the EEOC's final rules have been published.

- The time limit for the HCRC to draft rules set out in S.B. 2565 SD1 is more than adequate for the HCRC to decide which of the EEOC's regulations need to be supplemented by specific rules from the HCRC and which can be adopted by the HCRC because the particular regulation conforms to the HCRC's interpretations.
  - The Equal Employment Opportunity Commission (EEOC) proposed regulations were published on July 1, 2009.
  - Being proactive, the HCRC should have been analyzing the EEOC's proposed regulations, submitting comments about the proposed regulations and preparing their own draft rules based on the proposed regulations. They should already have a draft rules which only need to be revised to reflect any material changes made by the EEOC.
    - The HCRC does not have to adopt new rules. It could adopt the federal rules where it conforms to the HCRC's interpretations or its existing rules.
    - Based on experience, draft rules do not usually differ significantly from the final rules so six months is more than adequate.
  - Some State Commissions such as the Disability and Communication Access Board, have submitted comments on the proposed rules and have modified their rules based on the EEOC's proposed regulations and will make any required modifications, if necessary once the final regulations have been published.
- Adhering to the six month period specified in S.B. 2565 SD1 will provide employers with the certainty that is necessary to run their businesses. A longer period would be a hardship.

Thank you for the opportunity to testify.

